

Falls Township Clean Air Ordinance

TOWNSHIP OF FALLS
BUCKS COUNTY, PENNSYLVANIA
ORDINANCE NO. _____

AN ORDINANCE OF TOWNSHIP OF FALLS, BUCKS COUNTY, PENNSYLVANIA ESTABLISHING AIR QUALITY MONITORING AND EMISSION STANDARDS AND PROVIDING FOR CRIMINAL AND CIVIL PENALTIES AND OTHER ENFORCEMENT ACTIONS

WHEREAS, the United States of America Clean Air Act, as amended, including Amendments of 1989, and the Pennsylvania Air Pollution Control Act of January 9, 1960 (P.L. 2119), as amended, provide in part for the better protection of the health, general welfare and property of the people of the Commonwealth by the abatement, reduction and prevention of the pollution of the air by smokes, fumes, gases, odors, mists, vapors, and similar matter, or any combination thereof; and

WHEREAS, the Federal and Commonwealth Legislatures have granted the power to local municipalities to adopt more protective air pollution standards than those provided within the cited Acts, as affirmed by the adoption of section 12 of Act 95 of 1992, 35 P.S. §4012(a); and

WHEREAS, local municipalities have thus been empowered with the right to enact ordinances in protecting and preserving the ambient air quality; and

WHEREAS, Falls Township's ambient air quality is a matter of vital concern to the residents of the Township; and

WHEREAS, the Township of Falls is of the opinion that increased introduction of air contaminants within the Township would have an adverse effect on the ambient air quality; and

WHEREAS, the Township of Falls has determined that the impact of increased air contaminants should be borne by those introducing the contaminants; and

WHEREAS, the Township of Falls has determined that existing Federal and Commonwealth standards for air pollution monitoring and control are less stringent than desired, as they do not require state-of-the-art pollution prevention, monitoring or emissions reduction technology, do not reflect the current scientific understanding of the impact of environmental toxins on human health, and do not account for multiple, additive, cumulative and synergistic effects of pollutants on health; and

WHEREAS, pursuant to Section 607 of the Second Class Township Code, the Township Board of Supervisors is "charged with... the execution of legislative, executive and administrative powers in order to... secure the health, safety and welfare of the citizens of the township;" and

WHEREAS, Article I, Section 27 of the Pennsylvania Constitution makes it the legal duty of the Township to protect the right of all Pennsylvanians to clean air; and

WHEREAS, there are many pollutants that could be released into the Township's air for which no monitoring is required or for which monitoring is too infrequent to serve as an accurate indicator of annual emissions, given that occasional tests do not capture or measure emissions during start-up, shutdown or malfunction conditions,

and do not capture or measure variations in emissions due to variability in fuels, feedstocks, processes, or changes in operating conditions;

WHEREAS, as required by 35 P.S. §4012(a), the Township of Falls finds that the provisions of this Ordinance are not less stringent than those of the Clean Air Act, the Pennsylvania Air Pollution Control Act, or the rules and regulations promulgated thereunder;

WHEREAS, the residents of Falls deserve to be protected from unnecessary air pollution by having the Township's industries operate as good neighbors, using the cleanest, least-polluting operating methods and technologies as are available in their industry;

NOW, THEREFORE, IT IS HEREBY ORDAINED AND ENACTED BY THE PEOPLE OF THE TOWNSHIP OF FALLS, AS FOLLOWS:

ARTICLE I – TITLE, PURPOSE AND AUTHORITY

Section 1. Short Title

This Ordinance shall be known and may be cited as the "Township of Falls Clean Air Ordinance."

Section 2. Purpose

The purpose and intent of this ordinance is to ensure that accurate and complete information is available to the Township and general public about pollutants released from new air polluting facilities within the Township of Falls, Bucks County, Pennsylvania, and to exercise the authority granted to the Township under the Pennsylvania Air Pollution Control Act.

Section 3. Applicability

This ordinance shall apply and be in full force and effect in Township of Falls, Bucks County, Pennsylvania.

Section 4. Authority

This Ordinance is enacted pursuant to the authority granted to the Township of Falls by all relevant Federal and State laws and their corresponding regulations, including, without limitation, the following:

Clean Air Act, 42 U.S.C. § 7416;

Pennsylvania Constitution, Article I, Section 27;

Pennsylvania Second Class Township Code;

Pennsylvania Air Pollution Control Act, 35 P.S. § 4012(a), which preserves the rights of municipalities to adopt air pollution ordinances and regulations not less stringent than the requirements of the Clean Air Act, the Pennsylvania Air Pollution Control Act, or rules and regulations promulgated thereunder.

ARTICLE II – DEFINITIONS

The following words and phrases when used within this Ordinance, unless the context clearly indicates otherwise, shall have the meaning ascribed to them in this Article:

- (a) Air pollution permit – any authorization from the Department or the U.S. Environmental Protection Agency allowing a Facility to legally emit air pollutants, including an Air Quality Plan Approval, Title V Operating Permit, Federally Enforceable State Operating Permit, conditions placed on a Facility in a Request for Determination (RFD) of Requirement for Plan Approval, or a Consent Order and Agreement.
- (b) Commercially available – A system that is currently offered for purchase by equipment vendors for the proposed application, and for which service contracts can be obtained for a fee. The determination of commercial availability does not include an analysis of the costs of the system.
- (c) Continuous Emissions Monitoring System (or “CEMS”) – A pollution monitoring system capable of sampling, conditioning, analyzing, and providing a record of emissions at frequent intervals that meets U.S. Environmental Protection Agency or Department data acquisition and availability requirements. The sampling frequency capability sufficient to qualify a system as a CEMS for the purposes of this ordinance must at a minimum deliver a monitoring sample (i) once per minute or (ii) any lesser frequency of interval that still provides sufficient data for a direct determination of compliance with all applicable emission limitations imposed by the Department for the Facility, but in no case may the frequency of interval for monitoring samples be less than once per hour. In the case of dioxins, furans, and polycyclic aromatic hydrocarbons, long-term sampling equipment may be used if real-time monitors are not Commercially Available, so long as year-round monitoring is still achieved through back-to-back use of long-term samples.
- (d) Department – The Pennsylvania Department of Environmental Protection, or any successor state agency responsible for air pollution permitting.
- (e) Facility – A New Air Polluting Facility, as defined by this Ordinance, and their Owner and Operator, including their designated Responsible Official.
- (f) New Air Polluting Facility – Any facility, located in the Township of Falls, that commences operation after the effective date of this ordinance, which produces energy or which treats, stores, or disposes of waste in any process or combination of processes that includes combusting a Waste or Solid Fuel or gases produced on-site from the gasification, pyrolysis, off-gassing or venting of such Waste or Solid Fuel, and which is capable of processing at least five tons of Waste or Solid Fuel per day. A New Air Polluting Facility does not include a landfill gas utilization project.
- (g) Owner – The Person that has the legal right of proprietorship of a Facility.
- (h) Operator – Each Person that operates a Facility.
- (i) Person – All entities which are the subject of legal rights and duties, including individuals, public or private corporations, companies, limited liability corporations, partnerships, limited partnerships, limited liability partnerships, non-profit organizations, trusts, estates, receivers, guardians, personal representatives, fiduciaries, firms, societies, foundations, institutions or other association of persons,

governmental bodies and municipal authorities organized under the laws of any state or the United States or any country.

- (j) Responsible Official – “responsible official” as defined by 40 CFR § 70.2 and 25 Pa. Code § 121.1.
- (k) $TEQ_{DF}-WHO_{98}$ – A unit of measurement for dioxins and furans, standardized to toxic equivalents, calculated in accordance with the World Health Organization’s 1998 method.
- (l) Township – The Township of Falls, Pennsylvania.
- (m) Waste or Solid Fuel – Any municipal waste, residual waste or hazardous waste as defined by 25 Pa. Code §271.1 or 25 Pa. Code §287.1, coal refuse as defined by 52 P.S. §§30.51–30.101, biomass as defined by 52 Pa. Code § 75.1, or other material that is solid at ambient temperatures.

ARTICLE III – MONITORING REQUIREMENTS

Section 1. Air Pollution Monitoring

- (a) Any New Air Polluting Facility operating within the Township of Falls shall install and operate Continuous Emissions Monitoring Systems (CEMS) for all pollutants listed in Section 2 and shall monitor and disclose information on emission of these pollutants at all times when the Facility is legally permitted to operate.
- (b) Pollution monitoring results shall become the property of the Township of Falls. All costs of monitoring shall be borne by the Facility Owner.
- (c) Exhaust gases may not be released into the atmosphere until they have cooled to below 200 degrees Centigrade in order that all dioxins and furans can be monitored accurately and completely. Dioxin/furan emissions monitors must be placed at a point after all air pollution control devices, where the exhaust gases have cooled to below 200 degrees Centigrade. Dioxin and furan measurements must be standardized to $TEQ_{DF}-WHO_{98}$ units for reporting purposes under this Ordinance. Reporting of dioxins and furans shall be in $TEQ_{DF}-WHO_{98}$ units as well as all other measurement methods available from the dioxin/furan CEMS.
- (d) Where applicable, non-detects shall be reported as half the minimum detection limit.
- (e) The Facility’s Owner shall furnish to the Township written consent for the inspection of the Facility at any time by the designees of the Township for the purpose of assuring compliance with this Ordinance. Such designees shall be permitted entry upon any property or into any building, premises or place on which or within which a New Air Polluting Facility may be located and to inspect the emissions monitoring equipment as may be necessary to ensure that such equipment is operational, is operating properly and is being used as intended by the manufacturer and in accordance with this Ordinance.

Section 2. Pollutants to be Continuously Monitored

- (a) Continuous Emissions Monitoring Systems (“CEMS”) equipment shall be used to monitor, measure and disclose each smokestack for emissions of the following pollutants:

- i. Dioxins and Furans
- ii. Carbon Dioxide (CO₂) & Carbon Monoxide (CO)
- iii. Hydrochloric Acid (HCl) & Hydrofluoric Acid (HF)
- iv. Nitrogen Oxides (NO_x)
- v. Sulfur Oxides (SO_x)
- vi. Particulate Matter (PM)
- vii. Volatile Organic Compounds (VOCs)
- viii. Ammonia
- ix. Polycyclic Aromatic Hydrocarbons (PAHs)
- x. Arsenic, Cadmium, Chromium, Lead, Manganese, Mercury, Nickel, Selenium & Zinc

ARTICLE IV – DATA DISCLOSURE

Section 1. Website for Data Disclosure

- (a) Within two months of the payment of a CEMS fee by any Facility under Article VII of this Ordinance, the Township shall procure a computer consultant to establish a website and its accompanying software, to be owned by the Township, where any Facilities regulated under this ordinance shall submit the data required to be disclosed by this Ordinance. In cooperation with the Facility, the website shall be functional no later than six months after the computer consultant is hired. No Facility may commence operation before the website and any software needed to be developed for it are configured such that CEMS data will be publicly presented on the website. The software shall be designed to automatically present the data that must be presented under Section 2, and must make possible the other data disclosure requirements of this Ordinance. Facility Owners and Operators must cooperate with the computer consultant, providing relevant CEMS data, CEMS vendor contacts and other such information as may be needed for the efficient and effective design of the website and corresponding software.
- (b) The website shall be configured to allow any member of the public to sign up for email notifications. Notifications shall be available at a frequency (immediately, daily, weekly, or monthly) chosen by the user and for any of the following notice types: violations of any local, state or federal emission limit, CEMS down time, or new documents uploaded to the website. The Township must designate an enforcement officer who shall immediately be notified of the aforementioned notices.
- (c) The Township shall archive and preserve all digital data submitted under this ordinance until one year after the date when there are no more Facilities required to submit data to the Township under this ordinance.

Section 2. Disclosure of Emissions Data

(a) CEMS Data Disclosure

- i. Any New Air Polluting Facility operating within the Township shall transmit CEMS data collected at the Facility to the Township's data disclosure website. All CEMS data that is available to the Operator in a digital format shall be supplied real-time through an Internet feed to the Township's website. It shall be a violation of this Ordinance if CEMS data is not submitted to the Township's website within twenty-four (24) hours after the data is available to

the Facility's Owner or Operator.

- ii. Any New Air Polluting Facility is responsible for CEMS data disclosure at any point when the Facility is operating, including any testing of the Facility prior to commercial operation.
- iii. Any New Air Polluting Facility is required to immediately notify the Township and the Department of any violations of state or federal Air Pollution Permit limits detected by CEMS required by this Ordinance.
- iv. Any gaps in CEMS data reporting, or violations of emissions limits imposed by state or federal Air Pollution Permits or by this ordinance, shall be explained by the Facility Operator in the data reported to the Township's website.

(b) Air Emission Stack Test Data Disclosure

- i. The Owner of any New Air Polluting Facility operating within the Township shall disclose to the Township's data disclosure website all emissions data from any air pollution stack tests conducted at the Facility that are required by state or federal permits. This data shall be submitted to the publicly-available website managed by the Township no later than twenty-four (24) hours after the data is available to the Facility Owner or Operator.
- ii. The Owner of any New Air Polluting Facility is responsible for data disclosure of all stack tests conducted prior to start-up and upon start-up of the Facility.

(c) All data submitted to the Township's website must be supplied in formats prescribed by the Township.

(d) The Township shall publicly display the data received in real-time. Data will be displayed in line charts for each pollutant, including a line showing the level of each applicable emissions limit for such pollutant, as well as a calculated line displaying rolling averages in cases where regulatory limits are based on such averages. Any changes to those application emissions limits must be incorporated within the data submittals by the effective date of the change. All data submitted to the website must be archived and made available for download in a commonly available spreadsheet or database format.

(e) The Township shall compile summary charts listing all violations of any applicable emissions limits per pollutant for each Facility reporting under this ordinance. Daily, weekly, monthly and yearly summaries of emissions levels and violations shall be made available in an easily understandable presentation format. Emissions trend data shall be presented in line charts as well, showing the totals for all reporting Facilities, as well as Facility-specific trends from the beginning of the reported data set through the most recent year.

(f) Following submission to the Township of the annual report required by Article VI, annual summary data, specifying total emissions levels of all pollutants which are regulated by local, state or federal permits, a list of exceedances for each pollutant (including the date of the exceedance, the amount of the emission and a comparison to the limit exceeded), shall be published conspicuously in the most widely-read local newspaper of general circulation within the Township no later than April 1st at the expense of the Facility Owner.

Section 3. Disclosure of Regulatory Documents

- (a) Copies of all digital files exchanged between a New Air Polluting Facility regulated under this ordinance and any state or federal environmental regulatory agencies shall be uploaded to a documents section for the Facility, hosted on the Township's website, regardless of where the document originated. This shall be done in a format acceptable to the Township. Digital documents generated or received after the effective date of this Ordinance must be uploaded within three (3) business days of when they were transmitted to the regulatory agency or received by either the Facility's Owner, Operator or any contractor acting on behalf of the Facility Owner or Operator. Digital documents generated or received prior to the effective date of this ordinance must be uploaded within 365 days of the effective date of this Ordinance.
- (b) Copies of inspection reports, notice of violations, penalty assessments, permit applications, required reporting, compliance certifications and any other correspondence between a New Air Polluting Facility regulated under this ordinance and any state or federal environmental regulatory agency must be uploaded to the Township's website in a commonly-used document format acceptable to the Township. The Facility Owner is responsible for any scanning and other actions and expenses necessary to make this information available to the Township. Documents generated or received after the effective date of this ordinance must be uploaded within seven (7) days of when a document is sent to an agency or received by the Facility's Owner, Operator or any contractor acting on behalf of the Facility Owner or Operator. Documents sent or received prior to the effective date of this Ordinance, if they are relevant to active permits or ongoing permitting processes must be uploaded within 90 days of the effective date of this Ordinance.

ARTICLE V – EMISSION LIMITS

Section 1. Enforcement of Current Emission Limits Using CEMS

- (a) For any New Air Polluting Facility regulated by this Ordinance, the Township hereby adopts and incorporates by reference the standards, limits, standards of performance, and any other requirements for the emission of air contaminants in the Facility's Air Pollution Permit. It is expressly the intent of the Township in adopting these standards, limits, requirements, and standards of performance, to make them independently enforceable by the Township of Falls.
- (b) In adopting the aforementioned emissions limits, the Township shall convert such limits to daily emissions limit requirements, to be enforced by the Township using Continuous Emissions Monitoring data.

Section 2. Adoption of New Emission Limits

- (a) The Township reserves the right to create new standards for any New Air Polluting Facility regulated by this Ordinance.
- (b) Starting one year after any New Air Polluting Facility regulated by this Ordinance starts operation, any resident of the Township may request a public hearing on whether more protective standards are warranted for any such Facilities. The Township shall conduct at least one public hearing in any calendar year when such a request has been made, and shall consider any testimony as well as monitoring data required by this Ordinance in deliberating upon whether more protective standards are

appropriate for the Township to adopt.

ARTICLE VI – ANNUAL REPORTING

The Owner or Operator of a Facility shall submit annual reports by March 1 of each year for the previous calendar year to the Township listing all violations of emission limits identified in this Ordinance. The annual report must be signed by the Responsible Official for the Owner or Operator of the Facility and must contain a verification that subject to the penalties of Title 18 Pa. C.S. § 4904 and 35 P.S. § 4009(b)(2), the information contained in the annual report is true, accurate, and complete to the best of the signatory's belief formed after reasonable inquiry. In accordance with the provisions in Article XI, Section 2, the civil penalty for each reported violation shall be one thousand dollars (\$1,000) per day and payment of the total penalty shall be due to the Township by the following April 1.

ARTICLE VII – LICENSING AND FEES

Facilities subject to this Ordinance shall be obligated to pay fees to the Township for the operation of the programs under this Ordinance.

Section 1. Initial Licensing and Fee

All Facilities subject to this Ordinance must obtain a CEMS license by submitting an application to the Township providing all required information and tendering payment of \$15,000. A Responsible Official designated by the Owner of the Facility must sign the application. All funds received through this Article will be placed in a dedicated account by the Township to be used exclusively for the operation of the programs under this Ordinance.

Section 2. Annual license fee

All Facilities subject to this ordinance shall pay an annual CEMS license fee, subsequent to the initial application, of \$5,000 plus a website fee set by the Township sufficient to cover the Township's cost of the data disclosure website development and any ongoing maintenance of that website. If multiple Facilities are subject to this Ordinance, the website fee shall be split equally among the Facilities. The Facility shall submit a form, signed by their Responsible Official, certifying that the information in the application remains accurate or specifying any changes. Payment must be made 60 days prior to the anniversary of the date on which CEMS data submittals commenced.

ARTICLE VIII – UNLAWFUL CONDUCT

It shall be unlawful for any Person to fail to comply or assist in the violation of the provisions of this Ordinance or to fail to comply with any order or requirement of the Township; or to cause a public nuisance; or to cause an unacceptable human health risk resulting from emissions from the Facility; or to hinder, obstruct, prevent, or interfere with the Township or its personnel in their performance of any duty hereunder, including denying the Township access to the land or Facility; or to violate the provisions of 18 Pa. C.S. §4903 (related to false swearing) or §4904 (relating to unsworn falsification to authorities) in regard to papers required to be submitted under this Ordinance; or to tamper or interfere with any sample, process, device, equipment, computer hardware

or software, indicator or alarm, report, electrical power, pipe, gas or other media so as to affect or alter any sample, process, device, equipment, indicator or alarm, report, electrical power, pipe, gas or other media used in the gathering and analysis of samples or the disclosure of sample analysis as is required by the Township in this Ordinance.

ARTICLE IX – ENFORCEMENT

Section 1. Enforcement Orders

- (a) The Township's codes enforcement officer or any other duly authorized agent or designee shall have the power and duty to enforce the provisions of this Ordinance.
- (b) The Township may issue such orders as are necessary to aid in the enforcement of the provisions of this Ordinance. These orders shall include, but are not limited to: orders requiring Persons to cease unlawful activities or cease operation of a Facility which, in the course of its operation, is in violation of any provision of this Ordinance; orders to take corrective action or to abate a public nuisance; orders requiring the testing, sampling, or monitoring of emissions from the Facility; or orders requiring production of information. Such an order shall be issued if the Township finds that any emissions from the Facility are causing or contributing to an imminent and substantial endangerment or if the Township finds that any Person is in violation of any provision of this Ordinance.
- (c) The Township shall, in its order, require compliance with such conditions as are necessary to affect the purposes of this Ordinance.
- (d) An order issued under this Section shall take effect upon notice, unless the order specifies otherwise.
- (e) The authority of the Township to issue an order under this Section is in addition to any remedy or penalty which may be imposed pursuant to this Ordinance. The failure to comply with any such order shall constitute a violation of this Ordinance and is hereby declared to be a public nuisance.

Section 2. Responsibility of Owners and Operators

- (a) Whenever the Township finds that air pollution or danger of air pollution is or may be resulting from a Facility, the Township may order the Owner or Operator to take corrective action in a manner satisfactory to the Township, or it may order the Owner or Operator to allow access to the land upon which the Facility is constructed or the Facility by the Township or a third party to take such action.
- (b) For purposes of collecting or recovering the costs involved in taking corrective action or pursuing a cost recovery action pursuant to an order or recovering the cost of litigation, oversight, monitoring, sampling, testing and investigation related to a corrective action, the Township may collect the amount in the same manner as civil penalties are assessed and collected following the process for assessment and collection of a civil penalty contained in Section 9.1 of the Pennsylvania Air Pollution Control Act, 35 P.S. § 4009.1.

ARTICLE X – DECLARATION OF PUBLIC NUISANCES

A violation of this Ordinance or of any order issued by the Township under this Ordinance shall constitute a public nuisance. The Township shall have the authority to order any Person causing a public nuisance to abate the public nuisance. In addition, when abating a public nuisance, the Township may recover expenses of abatement following the process for assessment and collection of a civil penalty contained in Section 9.1 of the Pennsylvania Air Pollution Control Act, 35 P.S. § 4009.1. Whenever a nuisance is maintained or continued contrary to this Ordinance or any order issued pursuant to this Ordinance, the nuisance may be abatable in the manner provided in this Ordinance. However, nothing contained herein shall limit the Township to proceed under any other remedy available at law or in equity. Any Person who causes the public nuisance shall be liable for the cost of abatement.

ARTICLE XI – PENALTIES

For purposes of this Article, the term “Person” includes the Responsible Official.

In accordance with the Pa. Air Pollution Control Act, 35 P.S. 4012(g), providing that civil and criminal penalties for air pollution violations be uniform throughout the Commonwealth, and further providing that “the penalties and remedies set forth in this act be the penalties and remedies available for enforcement of any municipal air pollution ordinances or regulations, and shall be available to any municipality, public official, or other Person having standing to initiate proceedings for the enforcement of such municipal ordinances or regulations” the criminal and civil penalties for violation of this Ordinance shall be the following:

Section 1. Criminal Penalties

- (a) Any Person who violates any provision of this Ordinance or any order of the Township issued pursuant to this Ordinance commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than one hundred dollars (\$100.00) nor more than two thousand five hundred dollars (\$2,500.00) for each separate offense and, in default of the payment of such fine, may be sentenced to imprisonment for ninety (90) days for each separate offense. Employees or any other duly authorized agent or designee of the Township authorized to conduct inspections or investigations are hereby declared to be law enforcement officers authorized to issue or file citations for summary violations under this Ordinance, and Counsel for the Township is hereby authorized to prosecute these offenses. For purposes of this subsection, a summary offense may be prosecuted before any district justice in this Township. There is no accelerated rehabilitative disposition authorized for a summary offense.
- (b) Any Person who willfully or negligently violates any provision of this Ordinance commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not less than one thousand dollars (\$1,000.00) nor more than fifty thousand dollars (\$50,000.00) for each separate offense or to imprisonment for a period of not more than two (2) years for each separate offense, or both.
- (c) Any Person who knowingly makes any false statement or representation in any application, record, report, certification or other document required to be either filed or maintained by this Ordinance commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not less than two thousand five hundred dollars (\$2,500.00) nor more than fifty thousand dollars (\$50,000.00) for each separate offense or to imprisonment for a period of not more than two (2) years for each separate offense, or both.

Section 2. Civil Penalties

- (a) In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this Ordinance or any order issued pursuant to this Ordinance, the Township may assess a civil penalty for the violation. The penalty may be assessed whether or not the violation was willful. The civil penalty so assessed shall not exceed twenty-five thousand dollars (\$25,000.00) per day for each violation. In determining the amount of the penalty, the Township shall consider the willfulness of the violation; damage to air, soil, water or other natural resources of the Commonwealth or their uses; financial benefit to the Person in consequence of the violation; deterrence of future violations; cost to the Township and Commonwealth; the size of the Facility; the compliance history of the Facility; the severity and duration of the violation; degree of cooperation in resolving the violation; the speed with which compliance is ultimately achieved; whether the violation was voluntarily reported; other factors unique to the Owners or Operators of the Facility; and other relevant factors.
- (b) When the Township proposes to assess a civil penalty, it shall inform the Person of the proposed amount of the penalty. The Person charged with the penalty shall then have thirty (30) days to pay the proposed penalty in full, or, if the Person wishes to contest the amount of the penalty or the fact of the violation to the extent not already established, the Person shall forward the proposed amount of the penalty to the Falls Township Board of Supervisors within the thirty (30) day period for placement in an escrow account with the State Treasurer or any Commonwealth bank or post an appeal bond to the Falls Township Board of Supervisors within thirty (30) days in the amount of the proposed penalty, provided that such bond is executed by a surety licensed to do business in the Commonwealth and is satisfactory to the Township. If, through administrative or final judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty shall be reduced, the Falls Township Board of Supervisors shall, within thirty (30) days, remit the appropriate amount to the Person with any interest accumulated by the escrow deposit. Failure to forward the money or the appeal bond at the time of the appeal shall result in a waiver of all legal rights to contest the violation or the amount of the civil penalty unless the appellant alleges financial inability to prepay the penalty or to post the appeal bond. The Falls Township Board of Supervisors shall conduct a hearing to consider the appellant's alleged inability to pay within thirty (30) days of the date of the appeal. The Falls Township Board of Supervisors may waive the requirement to prepay the civil penalty or to post an appeal bond if the appellant demonstrates and the Falls Township Board of Supervisors finds that the appellant is financially unable to pay. The Falls Township Board of Supervisors shall issue an order within thirty (30) days of the date of the hearing to consider the appellant's alleged inability to pay. The amount assessed after administrative hearing or after waiver of administrative hearing shall be payable to the Township and shall be collectible in any manner provided by law for the collection of debts, including the collection of interest on the penalty amount computed in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. 51 et seq.), from the date of assessment of the penalty. If any Person liable to pay any such penalty neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue, shall constitute a debt of such Person, as may be appropriate, to the Township. The debt shall constitute a lien on all property owned by said Person when a notice of lien incorporating a description of the property of the Person subject to the action is duly filed with the prothonotary of the court of common pleas where the property is located. The prothonotary shall promptly enter upon the civil judgment or order docket, at no cost to the Township, the name and address of the Person, as may be appropriate, and the amount of the lien as set forth in the notice of lien. Upon entry by the prothonotary, the lien shall attach to the revenues and all real and Personal property of the Person, whether or not the Person is solvent. The notice of lien, filed pursuant to this Section, which affects the property of the Person shall create a lien with priority over all

subsequent claims or liens which are filed against the Person, but it shall not affect any valid lien, right or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien under this Section.

Section 3. Determination of Penalties for CEMS Reporting and Emission Limit Violations

- (a) On a quarterly basis, an environmental engineer retained by the Township shall review the data reported to the Township and recommend appropriate penalties for non-compliance with CEMS reporting requirements and any emission limits established in accordance with this ordinance. The Facility Owner is responsible, separate from any licensing and fees required under Article VII, to reimburse the Township for the cost associated with the hiring the environmental engineer, and must reimburse the Township within 30 days of being invoiced by the Township.
- (b) Penalties shall be assessed for any gaps in CEMS data availability as well as for any exceedances of emissions limits. The engineer may use Department CEMS and emissions limit penalty assessment procedures as a guide, but shall not allow exceptions for excess emissions during soot blowing, start-up, shutdown, or malfunctions. The engineer shall review any stated reasons for each exceedance or data unavailability and take this into consideration when recommending appropriate penalties.

ARTICLE XII – RIGHT TO APPEAL

- (a) Any Person directly affected by a final decision of the Township or order issued under this Ordinance shall have the right to appeal to the Falls Township Board of Supervisors by filing a written application for appeal with the Township Secretary within twenty (20) days after the final decision or order. Provided a written application for appeal is timely filed, a hearing will be scheduled before the Falls Township Board of Supervisors and the appellant will be provided at least ten (10) days' notice of the hearing.
- (b) An appeal under this section shall not act as a supersedeas, provided, however, that upon application and for cause shown, the Falls Township Board of Supervisors may issue such a supersedeas.
- (c) The appeals process under this Section shall be conducted in accordance with the Administrative Law and Procedures Act, 2 P.S. §101 et seq.

ARTICLE XIII – COMMUNITY ENFORCEMENT

Any Township resident or taxpayer shall have the standing and authority to bring a civil action to compel compliance with this Ordinance's provisions and/or to seek civil penalties for a violation of a provision of this Ordinance or any order issued pursuant to this Ordinance. A civil action under this section may not be commenced prior to thirty (30) days after the plaintiff had given notice in writing of the noncompliance to the Township and to the Owner or Operator of the Facility.

ARTICLE XIV – SEVERABILITY

Each separate provision of this Ordinance shall be deemed independent of any other provision of this Ordinance, and if any provision, sentence, clause, section or part hereof is held to be illegal, invalid or unconstitutional or inapplicable to any Person, Entity or circumstances, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this Ordinance or their application to other parts or circumstances. It is hereby declared to be the legislative intent that this Ordinance would have been enacted as if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included herein, and as if the Person, Entity or circumstances to which this Ordinance, or any part hereof is inapplicable had been specifically exempted therefrom.

ARTICLE XV – EFFECTIVE DATE

That this Ordinance shall become effective immediately.

ORDAINED AND ENACTED THIS _____ DAY OF _____ 2018.

ATTEST: